

Message Text

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ACTION NEA-10

INFO OCT-01 ISO-00 SSO-00 NSCE-00 INRE-00 FEA-01
ACDA-07 CIAE-00 INR-07 IO-13 L-03 NSAE-00 NSC-05
EB-08 NRC-05 OES-07 DODE-00 ERDA-05 SS-15 SP-02
PM-05 AID-05 COME-00 /099 W
-----128866 290609Z /21/46

O 281245Z JUL 77

FM AMCONSUL BOMBAY

TO SECSTATE WASHDC NIACT IMMEDIATE 7502

INFO AMEMBASSY NEW DELHI IMMEDIATE

AMEMBASSY ISLAMABAD

C O N F I D E N T I A L SECTION 1 OF 2 BOMBAY 1800

C O R R E C T E D C O P Y (TEXT)

ISLAMABAD FOR NYE

E.O. 11652 GDS

TAGS: IN, TECH

SUBJ: TARAPUR FEASIBILITY STUDY

REF: A) STATE 176521, B) STATE 176522, C) BOMBAY 1791

1. CONGEN SHARES DEPARTMENT'S CONCERN OVER PROTRACTED DELAYS IN NEGOTIATING AGREEMENT FOR THE TARAPUR RERACKING STUDY. MORE-OVER, WE ARE SOMEWHAT PERPLEXED BY THE IAEC'S APPROACH TO THESE NEGOTIATIONS WHICH HAS CONTRIBUTED SIGNIFICANTLY TO DRAGGING OUT THIS EXERCISE. HOWEVER, WE DO NOT BELIEVE SETHNA AND COMPANY ARE DELAYING IN ORDER TO SET STAGE FOR CONFRONTATION ON SOME OCCASION LIKE NYE VISIT, WHICH MIGHT PROVIDE OPPORTUNITY FOR THME TO PUSH THEIR VIEWS ON SUCH MATTERS AS INDEMNITY ISSUE TO BEST ADVANTAGE. RATHER, CONGEN BELIEVES THAT IAEC'S HESITATION REFLECTS THEIR BELIEF THAT A QUICK CONCLUSION OF WHAT THEY REGARD AS A POOR AGREEMENT FOR THE STUDY PHASE OF THIS EXERCISE WOULD ACTUALLY RETARD DESIGN AND INSTALLATION OF THE RACKS THEMSELVES. THEY
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OBVIOUSLY WANT A STUDY WHICH LEAVES THEM FREE TO MOVE QUICKLY TO INSTALLATION PHASE. WE BELIEVE THAT TWO FACTORS HAVE INFLUENCED THE DEVELOPMENT OF THIS VIEW WITHIN IAEC: A) THEIR RECENT EXPERIENCE WITH GE AND B) THE LEGALISTIC APPROACH THAT GE HAS TAKEN IN FIRST SEEKING A SEPARATE CONTRACT AND THEN ADVANCING WHAT THE IAEC REGARDS AS PATENTLY OFFENSIVE LANGUAGE TO SPELL OUT THE INDEMNITY CLAUSE. SETHNA, WHOSE MOST PROMINENT CHARACTER-

ISTIC IS PRAGMATISM, APPARENTLY BELIEVES THAT HE WOULD BE UNABLE TO EXPLAIN THE KIND OF AGREEMENT THAT GE IS SEEKING WITHIN HIS OWN GOVERNMENT. LIKE ALL INDIAN OFFICIALS, HE HAS TO BE MOST WARY OF KIBBITZERS WHO ARE ALL TOO READY TO ACCUSE ANY INDIAN NEGOTIATOR OF MAKING NEEDLESS CONCESSIONS TO THE NEFARIOUS MULTINATIONALS.

2. IN THIS NEGOTIATION, SETHNA HAS MADE CLEAR ON MANY OCCASIONS THAT HE WANTS TO RESOLVE THE CURRENT STORAGE PROBLEM AT LEAST TEMPORARILY THROUGH THE RERACKING APPROACH. BOTH HE AND SHAH HAVE FORTHRIGHTLY ADMITTED THAT IAEC CANNOT RESOLVE THIS PROBLEM WITHOUT HELP FROM THE UNITED STATES. IT IS TRUE THAT SHAH'S INSTINCTS AT TIMES LEAD HIM TO THINK THAT REPROCESSING WOULD REALLY BE A PREFERABLE SOLUTION BUT THAT VIEW ENJOYS NO OFFICIAL SUPPORT IN THE IAEC FROM WHAT CONGEN CAN SEE IN THE GOI AT THIS TIME. MOREOVER, IT SEEMS CLEAR TO CONGEN THAT SETHNA HAS INSTRUCTED ALL OF HIS ASSOCIATES TO PUT THEIR MINDS INTO RESOLVING THE CURRENT IMPASSE OVER THE TEXT OF THE STUDY AGREEMENT AND NOT BOTHER WITH OTHER TACTICS.

3. THE IAEC COMMENTS ON US REDRAFT TRANSMITTED AS BOMBAY 1791 SUGGEST TWO ROUTES WHICH THEY ARE READY TO ACCEPT IMMEDIATELY TO GET THIS PROJECT MOVING. THEIR FIRST PREFERENCE IS TO REVERT TO THE MAY 21 DRAFT AS REVISED AND INCLUDING CLAUSE 8E AS PHRASED IN DEPTTEL 168761 BUT WITHOUT THE FINAL SENTENCE ON INDEMNITY IN CLAUSE 9 OF STATE 168761. BOTH SHAH AND SETHNA CONFIRMED TO CONGEN TODAY THAT THE IAEC IS PREPARED TO SIGN THE AGREEMENT IMMEDIATELY IF THIS APPROACH IS ACCEPTED. AS DEPTTEL 176521 NOTES THAT GE RECOGNIZES THAT THE DIFFICULT FINAL SENTENCE OF CLAUSE 9 MERELY CLARIFIES OBLIGATIONS ALREADY ACCEPTED BY THE GOI IN EARLIER SECTIONS OF THE AGREEMENT, THEN IT WOULD NOT SEEM ALL TOGETHER IMPOSSIBLE FOR GE TO ACCEPT HIS APPROACH.

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4. WHEN CONGEN ASKED SHAH THIS MORNING WHETHER HIS MOST RECENT COMMENTS REFLECTED ANY INTENTION TO BACK AWAY FROM THE ASSURANCES HE GAVE US AND WHICH WERE REPORTED IN BOMBAY 966 AND BOMBAY 905, HE HASTENED TO SAY THAT HE STANDS FULLY BEHIND HIS EARLIER POSITION. IN OTHER WORDS, THE IAEC REMAINS PREPARED TO ACCEPT LIABILITY FOR WHATEVER THEY DO WITH INFORMATION CONTAINED IN THE FEASIBILITY STUDY, BUT THEY FEEL THAT THE LAST SENTENCE OF PARAGRAPH 9 IS UNNECESSARY, OFFENSIVE AND IMPOSSIBLE TO EXPLAIN SATISFACTORILY WITHIN THEIR OWN GOVERNMENT.

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INFO OCT-01 ISO-00 NEAE-00 SSO-00 NSCE-00 INRE-00
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EB-08 NRC-05 OES-07 FEAE-00 DODE-00 ERDA-05 SS-15
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O 281245Z JUL 77
FM AMCONSUL BOMBAY
TO SECSTATE WASHDC NIACT IMMEDIATE 7503
INFO AMEMBASSY NEW DELHI IMMEDIATE
AMEMFUSSY ISLAMABAD

C O N F I D E N T I A L SECTION 2 OF 2 BOMBAY 1800

ISLAMABAD FOR NYE

5. THE IAEC'S SECOND PREFERENCE TO BREAK FROM THE CURRENT IMPASSE IS TO HAVE ERDA SEND A FEW (IN CONGEN'S VIEW NOT MORE THAN THREE) OF ITS OWN EXPERTS TO INDIA TO ATTEMPT TO RESOLVE THIS IMPASSE. THIS GROUP SHOULD ARRIVE IN TIME TO BE AT TARAPUR FOR THE AUGUST 3 NYE PARTY VISIT THERE. THE IAEC HOPES THAT ON THE BASIS OF CONSULTATIONS WITH THESE ERDA EXPERTS IT WOULD BE ABLE TO DEVELOP THE NECESSARY EXPERTISE ON ITS OWN TO REMOVE FASTENERS FOR EXISTING RACKS, CUT UP REMOVED RACKS AND INSTALL FASTENERS FOR NEW POISON RACKS. IT WOULD ALSO HOPE TO BE ABLE ON BASIC THESE CONSULTATIONS TO LOCATE A SUPPLIER WHO HAS ALREADY FURNISHED U.S. UTILITIES WITH SUCH POISON RACKS AND COULD QUICKLY FABRICATE SOME WHICH IAEC WOULD INSTALL ITSELF IN THE TARAPUR POOLS. ON THE OTHER HAND, IAEC RECOGNIZES THAT SUCH CONSULTATIONS WITH ERDA EXPERTS MIGHT CONVINCE IT TO EMPLOY A U.S. CONSULANT TO DO THE ACTUAL DESIGN WORK. THAT CONSULTANT COULD BE GE OR SOME FIRM WHICH IS PERHAPS A LITTLE LESS APPREHENSIVE ON THE NUCLEAR LIABILITY ISSUE.

6. THE THIRD POSSIBILITY IS OF COURSE TO TRY TO NEGOTIATE OUT THE AGREEMENT WITH GE ON THE BASIS OF THE REVISED DRAFT TRANSMITTED
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AS DEPTTEL 168761, BUT MINUS THE LAST SENTENCE OF CLAUSE 9. IN RESPONSE TO A DIRECT QUESTION TODAY, THE IAEC HAS ASSURED CONGEN THAT THEY ARE QUITE WILLING TO TRY TO WORK WITH GE TO FIND WAY OUT OF THE IMPASSE. THEY HAVE NO BASIC PREJUDICE AGAINST THAT COMPANY, BUT SIMPLY BELIEVE THAT GE IS DIFFICULT TO DEAL WITH ON THIS PROJECT WHICH GE DOES NOT CONSIDER LARGE ENOUGH TO WARRANT ANY RISK ON

THE NUCLEAR LIABILITY ISSUE. THE POSSIBILITY MENTIONED IN DEPTTEL 176521 OF HANDLING THE INDEMNITY PROBLEM BY REVISING THE GOI LEGAL MEMORANDUM IS NOT ATTRACTIVE TO THE IAEC. THEY BELIEVE THAT THE LAW MINISTRY, WHICH PREPARED THIS MEMORANDUM, WOULD BE MORE RELUCTANT THAN THE IAEC ITSELF TO EXPLICITLY STATE THAT IT WAS ACCEPTING LIABILITY REGARDLESS OF FAULT.

7. COMMENT: CONGEN DOES NOT REPEAT NOT BELIEVE THAT FAILURE TO CONCLUDE AN AGREEMENT BEFORE THE NYE VISIT WILL "CAST A PALL OVER THAT VISIT". THIS WILL BE PARTICULARLY TRUE IF WE CAN MANAGE TO HAVE AN ERDA RERACKING EXPERT THERE AT THE TIME OF THE VISIT. RIGHTLY OR WRONGLY, THE IAEC BLAMES GE, NOT THE USG, FOR THE DELAY ON THIS PROJECT. DISTANCING OURSELVES FROM THE COMPANY ON

THIS MATTER, IF ONLY TEMPORARILY, CAN STRENGTHEN THIS IMPRESSION AND, CONGEN BELIEVES, MAKE IT EASIER TO RESOLVE THE ISSUE.

8. CONGEN IS INCLINED TO BELIEVE THAT THE BEST CURRENT APPROACH IS TO SEND SOME ERDA TECHNICAL EXPERTS HERE AT THE TIME OF NYE'S VISIT. IF TWO OF THESE ARE SPECIALISTS IN RERACKING AND THE OTHER IS A LAWYER OR PROGRAM ADMINISTRATOR, THEN THIS GROUP COULD STAY ON AFTER NYE'S DEPARTURE AND HOPEFULLY WORK OUT A SUCCESSFUL SOLUTION TO THE PROBLEM WITH SETHNA AND SHAH. I LATTER ASSURED CONGEN THAT DECISION-MAKERS IN IAEC WILL BE AVAILABLE FOR ADDITIONAL CONSULTATIONS FOR THE REMAINDER OF WEEK AFTER NYE DEPARTS. CONGEN KNOWS THAT CHAIRMAN SETHNA INTENDS TO BE IN BOMBAY THE BEGINNING OF WEEK FOLLOWING NYE VISIT SO THERE SHOULD BE NO CONFIDENTIAL

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PROBLEM OF ACCESS TO THE KEY INDIAN OFFICIALS.

9. FYI: WE ARE REPEATING THIS MESSAGE TO ISLAMABAD FOR DR. NYE, EVEN THOUGH EMBASSY ISLAMABAD DOES NOT HAVE TECHNICAL REFERENCE CABLES, SO THAT HE WILL HAVE OUR VIEW OF SETHNA'S EVALUATION OF THE DELAY IN CONCLUDING AGREEMENT ON RERACKING STUDY AND OF THE OPTIONS WE SEE FOR BREAKING THE NEGOTIATING IMPASSE. END FYI. COURTNEY

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Message Attributes

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Disposition Date: 22 May 2009
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